

AMENDED IN SENATE MARCH 30, 2011

AMENDED IN SENATE MARCH 21, 2011

**SENATE BILL**

**No. 602**

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**Introduced by Senator Yee**

February 17, 2011

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An act to add Title 1.81.15 (commencing with Section 1798.90) to Part 4 of Division 3 of the Civil Code, relating to ~~the reader~~ privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as amended, Yee. Reader Privacy Act.

The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure. The act provides that all registration and circulation records of any library which is in whole or in part supported by public funds is confidential and shall not be disclosed to any person, except as provided.

Existing law protects the privacy of personal information, including customer records, and requires a business that owns or licenses personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

Existing law provides various grounds for the issuance of a search warrant, and provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property and the place to be searched.

The Civil Discovery Act generally provides for the scope of discovery in civil actions and proceedings, and permits a party to a civil action to obtain discovery by inspecting documents, tangible things, and land or other property in the possession of any other party to the action.

This bill would enact the Reader Privacy Act, which would, among other things, prohibit a commercial provider of a book service, as defined, from disclosing, or being compelled to disclose, any personal information relating to a user of the book service, subject to certain exceptions. The bill would require a court, when considering whether to issue a search warrant or an order for civil discovery, to make specified findings, including that the person or entity seeking disclosure of personal information of a user of a book service has a compelling interest in obtaining that information. The bill would impose civil penalties on a provider of a book service for knowingly disclosing a user's personal information to a government entity in violation of these provisions, *except as otherwise provided*. The bill would require that any provider of a book service prepare a specified report relating to demands for disclosure of personal information of users of the book service, and publish that information in a searchable format on the Internet.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Title 1.81.15 (commencing with Section 1798.90)  
2 is added to Part 4 of Division 3 of the Civil Code, to read:

3

4 TITLE 1.81.15. READER PRIVACY ACT

5

6 1798.90. (a) This title shall be known and may be cited as the  
7 Reader Privacy Act.

8 (b) For purposes of this section:

9 (1) "Book" means paginated or similarly organized content in  
10 printed, audio, electronic, or other format, including fiction,  
11 nonfiction, academic, or other works of the type normally published  
12 in a volume or volumes.

13 (2) "Book service" means a service that, as its primary purpose,  
14 provides the rental, purchase, borrowing, browsing, or viewing of  
15 books.

1 (3) “Government entity” means any state or local agency,  
2 including, but not limited to, a law enforcement or any other  
3 investigative agency, department, division, bureau, board, or  
4 commission, or any individual acting or purporting to act for or  
5 on behalf of a state or local agency.

6 (4) “Personal information” means any information described in  
7 Section 1798.80, and specifically includes a unique identifier or  
8 Internet Protocol (IP) address when that identifier or address is  
9 being used to identify, relate, describe, or be associated with; a  
10 particular individual, and any information associated with a  
11 particular user’s access or use of a book service or a book in whole  
12 or partial form.

13 (5) “Provider” means any commercial entity offering a book  
14 service to the public.

15 (6) “User” means any person or entity that uses a book service.

16 (c) A provider shall not knowingly disclose to any government  
17 entity, or be compelled to disclose to any person or entity, ~~any~~  
18 ~~personal information of a user, in whole or in part~~ *a user’s personal*  
19 *information related to the use of a book or part of a book*, except  
20 under any of the following circumstances:

21 (1) A provider shall disclose personal information of a user  
22 pursuant to a search warrant issued by a duly authorized court with  
23 jurisdiction over an offense under investigation using the  
24 procedures described in Chapter 3 (commencing with Section  
25 1523) of Title 12 of Part 2 of the Penal Code, if all of the following  
26 conditions are met:

27 (A) The court issuing the warrant finds that the person or entity  
28 seeking disclosure has a compelling interest in obtaining the  
29 personal information sought.

30 (B) The court issuing the warrant finds that the personal  
31 information sought cannot be obtained by the person or entity  
32 seeking disclosure through less intrusive means.

33 (C) The person or entity seeking disclosure provides the provider  
34 with reasonable notice of the proceeding prior to the issuance of  
35 the warrant.

36 (D) The opportunity to appear and contest the issuance of the  
37 warrant is afforded to the provider prior to the issuance of the  
38 warrant.

39 (E) Notice of the warrant is given to the user by the person or  
40 entity seeking disclosure contemporaneous with execution of the

1 warrant, unless there is a judicial determination of a strong showing  
2 of necessity to delay that notification for a reasonable period of  
3 time, not to exceed seven days.

4 (2) A provider shall disclose personal information of a user  
5 pursuant to a court order in a pending civil or administrative action,  
6 if all of the following conditions are met:

7 (A) The court issuing the discovery order finds that the person  
8 or entity seeking disclosure has a compelling interest in obtaining  
9 the personal information sought.

10 (B) The court issuing the discovery order finds that the personal  
11 information sought cannot be obtained by the person or entity  
12 seeking disclosure through less intrusive means.

13 (C) The person or entity seeking disclosure takes reasonable  
14 steps to provide the user and the provider with reasonable notice  
15 of the proceeding prior to the issuance of the court order in a timely  
16 manner to allow the user and provider the opportunity to appear  
17 and contest the issuance of the court order.

18 (D) The provider refrains from disclosing any personal  
19 information pursuant to the court order until it provides notice to  
20 the user about the issuance of the order and the ability to appear  
21 and quash the order, and the user has been given a reasonable  
22 opportunity to appear and quash the order.

23 (3) A provider shall disclose the personal information of a user  
24 to any person with the informed, affirmative consent of that user.

25 (4) A provider may disclose to a government entity, if the  
26 government entity asserts, and the provider in good faith believes,  
27 that there is an imminent danger of death or serious physical injury  
28 requiring the immediate disclosure of the requested personal  
29 information and there is insufficient time to obtain a warrant. The  
30 government entity seeking the disclosure shall provide the provider  
31 with a written statement setting forth the facts giving rise to the  
32 emergency upon request or no later than 48 hours after seeking  
33 disclosure.

34 (5) A provider may disclose personal information of a user of  
35 a book service to a government entity if the provider in good faith  
36 believes that the personal information is evidence directly related  
37 and relevant to a crime against the provider or that user of the book  
38 service.

39 (d) (1) Any court issuing a search warrant or civil discovery  
40 order requiring the disclosure of personal information of a user of

1 a book service shall impose appropriate safeguards against the  
2 unauthorized disclosure of personal information by the provider  
3 pursuant to the warrant or order.

4 (2) The court may, in its discretion, quash or modify a warrant  
5 or court order requiring the disclosure of the user's personal  
6 information upon a motion made by the user, provider, or person  
7 or entity seeking disclosure.

8 (e) Except as proof in an action for a violation of this section,  
9 no evidence obtained in violation of this section shall be admissible  
10 in any civil, administrative, or other proceeding.

11 (f) (1) Violations of this section shall be subject to the following  
12 penalties:

13 (A) Any provider that knowingly provides personal information  
14 about the use of a book service to a government entity in violation  
15 of this section shall be subject to a civil penalty not to exceed five  
16 hundred dollars (\$500) for each violation, which may be recovered  
17 in a civil action brought by the person who is the subject of the  
18 records.

19 (B) Any provider that knowingly provides personal information  
20 to a government entity in violation of this section on three or more  
21 occasions in any six-month period shall, in addition to the penalty  
22 prescribed by subparagraph (A), be subject to a civil penalty not  
23 to exceed five hundred dollars (\$500) for each violation, which  
24 may be assessed and recovered in a civil action brought by the  
25 Attorney General, by any district attorney or city attorney, or by  
26 a city prosecutor in any city having a full-time city prosecutor, in  
27 any court of competent jurisdiction.

28 (2) If an action is brought by the Attorney General, one-half of  
29 the penalty collected shall be paid to the treasurer of the county in  
30 which the judgment was entered, and one-half to the General Fund.  
31 If the action is brought by a district attorney, the penalty collected  
32 shall be paid to the treasurer of the county in which the judgment  
33 was entered. If the action is brought by a city attorney or city  
34 prosecutor, one-half of the penalty shall be paid to the treasurer  
35 of the city in which the judgment was entered, and one-half to the  
36 treasurer of the county in which the judgment was entered.

37 (3) The penalties provided by this section are not the exclusive  
38 remedy and do not affect any other relief or remedy provided by  
39 law.

1 (4) A civil action brought pursuant to this section shall be  
2 commenced within two years after the date upon which the  
3 claimant first discovered the violation.

4 (g) An objectively reasonable reliance by the provider on a  
5 warrant or court order for the disclosure of personal information  
6 of a user of a book service, or on any of the enumerated exceptions  
7 to the confidentiality of a user's personal information set forth in  
8 this section, is a complete defense to any civil, administrative, or  
9 criminal action.

10 (h) Unless disclosure of information pertaining to a particular  
11 request or set of requests is specifically prohibited by law, a  
12 provider shall prepare a report including all of the following  
13 information, to the extent it can be reasonably determined:

14 (1) The number of federal warrants, state warrants, grand jury  
15 subpoenas, civil and administrative subpoenas, court orders, and  
16 requests for information made with the informed consent of the  
17 user as described in paragraph (3) of subdivision (a), seeking  
18 disclosure of any personal information of a user related to the  
19 access or use of a book service or book, received by the provider  
20 from January 1 to December 31, inclusive, of the previous year.

21 (2) The number of disclosures made by the provider pursuant  
22 to paragraphs (5) and (6) of subdivision (a) from January 1 to  
23 December 31, inclusive, of the previous year.

24 (3) For each category of demand or disclosure, the provider  
25 shall include all of the following information:

26 (A) The number of times notice of a warrant or a court order in  
27 a civil or administrative action has been provided by the provider  
28 and the date the notice was provided.

29 (B) The number of times personal information has been  
30 disclosed by the provider.

31 (C) The number of times no personal information has been  
32 disclosed by the provider.

33 (D) The number of times the provider contests the demand.

34 (E) The number of times the user contests the demand.

35 (F) The number of users whose personal information was  
36 disclosed by the provider.

37 (G) The type of personal information that was disclosed and  
38 the number of times that type of personal information was  
39 disclosed.

- 1 (i) Reports prepared pursuant to subdivision (h) shall be made  
2 publicly available in an online, searchable format ~~by~~ *on or before*  
3 March 1 of each year.
- 4 (j) Any provider subject to Section 22575 of the Business and  
5 Professions Code shall create a prominent hyperlink to its latest  
6 report published pursuant to subdivision (i) in the disclosure section  
7 of the privacy policy applicable to its book service ~~by~~ *on or before*  
8 March 1 of each year.
- 9 (k) Nothing in this section shall otherwise affect the rights of  
10 any person under the California Constitution or any other law.